

Doc Code: AP.PRE.REQ

APR 14 2006

PTO/SB/33 (07-05)

Approved for use through 10/31/2006; OMB-0651-0002

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number 000026-00032	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed name _____		Application Number 09/980,084	Filed May 2, 2002
		First Named Inventor Andrew Laitt	
		Art Unit 3721	Examiner Hemant Desai
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s) Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> Applicant/inventor</p> <p><input type="checkbox"/> Assignee of record of the entire interest See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> Attorney or agent of record Registration number 32,795</p> <p><input type="checkbox"/> Attorney or agent acting under 37 CFR 1.34 Registration number if acting under 37 CFR 1.34</p> <p>Note: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input type="checkbox"/> *Total of _____ forms are submitted.</p>			

000026.00032/35722602v.1

Serial No. 09/980,084  
Andrew LAITT  
Attorney Docket No. 000026-00032

**Pre-Appeal Brief Request for Review**

The present application is a Second Request for Continued Examination (RCE). There is a pending non-final Office Action dated December 14, 2005 in the Second RCE. Extensive prosecution has already been conducted. Prior Office Actions rejecting the claims were dated June 13, 2005, January 26, 2005, May 10, 2004, November 19, 2003 and May 22, 2003.

In the present Action, claims 1-6, 8-20, 22, 27, 30-32 are rejected under 35 USC § 103(a) as being obvious over Kaufman (U.S. Patent No. 2,835,596) and Davy (U.S. Patent No. 3,199,756) or Soubier (U.S. Patent No. 2,194,451) and further in view of European Application No. 0302413. This is a new grounds of rejection.

In the previous June 13, 2005 Action, the Examiner rejected claims 1-20, 22, 27, 30-32 under 35 USC § 112, first paragraph, as failing to comply with the written description requirement. Claim 32 was rejected under 35 USC § 112, second paragraph, as being indefinite. The Amendment After Final Rejection filed October 27, 2005 (and considered in this RCE) overcame the § 112 rejections and those rejections are not repeated in the pending December 14, 2005 rejection.

Also in the previous June 13, 2005 Action, the Examiner rejected claims 1-16, 22, 27, 30-32 under 35 USC § 103(a) as being obvious over Kaufman in view of Davy and rejected claims 17-20 under 35 USC § 103(a) as being obvious over Kaufman and Davy and further in view of Warp (U.S. Patent No. 3,194,124).

In the present pending December 14, 2005 Action, the Examiner has admitted that the combinations of Kaufman and Davy and Kaufman, Davy and Warp are each overcome.

Serial No. 09/980,084

Andrew LAITT

Attorney Docket No. 000026-00032

"Applicant's arguments with respect to claims 1-6, 8-20, 22, 27, 30-33 has [sic] been considered but are moot in view of the new ground(s) of rejection." December 14, 2005 Action, p. 7, ¶3. Thus, the combination of Kaufman and Davy is already overcome as being insufficient to establish a *prima facie* case of obviousness. In any event, please see the arguments presented on pages 10-12 of the October 27, 2005 Amendment After Final Rejection.

As a consequence, the pending rejection is entirely dependent upon the added references Soubier and EP'413.

As noted before, one skilled in the art would not combine the teachings of Kaufman and Davy to incorporate the feature of a strip of sealed pouches into Kaufman. This is also true for Soubier. More importantly, Soubier teaches away from the present invention. Soubier is particularly concerned with the packaging of coffee. Coffee is not a brittle material within the understanding of the art. There is no perceived need to protect the coffee from mechanical damage during storage. Indeed, page 2, lines 53 to 56, disclose evacuating any gas from the pocket before sealing. This teaches away from the present invention in which an excess volume of air or gas is included above the brittle product to protect it. One skilled in the art would not refer to the area of coffee packaging, particularly in view of the known technique of the evacuating coffee packages which would be completely opposed to the invention.

None of Kaufman, Davy or Soubier teaches a brick shaped configuration. Of these, only Kaufman and Davy conceivably relate to the packing of brittle materials. Soubier relates to the packaging of a robust material, coffee, as described above.

Serial No. 09/980,084

Andrew LAITT

Attorney Docket No. 000026-00032

The EP '413 application in fact relates to the production of drink packages (see column 1, lines 14-16 and column 3, lines 39-40). This belongs to a completely different area of art. There is no problem at all of brittleness with drink packaging. One skilled in the art dealing with the present invention would not have referred to this reference. In addition, it is not the intention of EP '413 to provide a strip of connected containers. They are separated shortly after being formed (see Fig. 1). It is well known that when the drink containers are filled with liquid, they become very rigid, due to the incompressible nature of the filling and the strength of the card or paper from which they are normally formed. In the present invention, no such strength can be obtained, because the packages are formed of a relatively flexible material and comprise a substantial volume of air which does not give rigidity to the packaging in the same way. The present inventor has realized that connecting a series of brick shaped containers gives added stability. There is no disclosure of this in either of Soubier or Davy and certainly not in the EP '413 application. If one skilled in the art did apply the teaching of the EP '413 application, the result would have been separate brick shaped containers. This is a further teaching away from the present invention.

Reconsideration and withdrawal of the pending rejections are respectfully requested. Applicant should not be forced to incur the expense and delay of an appeal in this application.

As all grounds of rejection have been addressed and overcome, entry of this Amendment and issuance of a Notice of Allowance of all pending claims, as now presented, are respectfully solicited.

In the event that there are any questions relating to this Request or to the application in general, it would be appreciated if the Examiner would telephone the undersigned attorney concerning such questions so that the prosecution of this application may be expedited.

*Serial No. 09/980,084*

*Andrew LAITT*

*Attorney Docket No. 000026-00032*

Please charge any shortage of fees or credit any overpayment thereof to BLANK ROME LLP, Deposit Account No. 23-2185 (000026-00032). In the event that a petition for an extension of time is required to be submitted herewith and in the event that a separate petition does not accompany this Request, Applicant hereby petitions under 37 C.F.R. 1.136(a) for an extension of time for as many months as are required to render this submission timely. In the event that a Notice of Appeal does not accompany this paper, Applicant hereby requests that a Notice of Appeal be entered.

Any fees due are authorized above.